National DNA Data Bank Advisory Committee



Annual Report 2003-2004

The National DNA Data Bank





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The website of the National DNA Data Bank of Canada may be found at:

www.nddb-bndg.org



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Message from the National DNA Data Bank Advisory Committee

Members of the National DNA Data Bank Advisory Committee were appointed in 2000 by the Solicitor General of Canada. The Committee was created to advise on the establishment and operation of the NDDB. Considered fundamental to the operation of the Data Bank, the Committee operates at arms length from the federal government and the RCMP. It reports annually to the RCMP Commissioner.

Committee members have expertise in policing, privacy, molecular biological sciences, genetics, medical ethics and the law. In meeting their mandate, they must balance the requirements of the *DNA Identification Act* regarding privacy, legal, ethical and human rights with the latest scientific developments in the application of DNA identification for law enforcement purposes.

Overall, the Advisory Committee remains very pleased with the operations of the NDDB and the positive impact it is having on the administration of justice in Canada. The Data Bank staff is exceptional and continues to find ways to make this world-class facility even more efficient. Hit rates continue to climb which means, of course, that the NDDB is helping to solve an ever-increasing number of serious crimes.

Over the 2003-04 fiscal year, the Advisory Committee has focused much of its attention on ways to increase the efficiency of the Data Bank through technology.

One of the most exciting new developments is *magnetic bead technology*. It allows for quicker extraction of biological samples and the rapid transfer to automated robotics that move the samples more efficiently through processing.

Despite the outstanding results, however, the Committee remains concerned with the relatively low number of samples being ordered by the courts and supplied to the NDDB for uploading. Given the direct correlation between the volume of samples loaded into the NDDB and the number of "hits," we must continue to work with the law enforcement and legal communities to draw their attention to the fact that opportunities are being missed.

For primary offences, where the law states that convicted offenders *shall* submit a DNA sample to the Data Bank, approximately half of the samples are being obtained. Again this year, we will recommend that education be a priority to encourage an increase in the number of convicted offender samples, as permitted under the *DNA Identification Act*.

We are committed to providing as much assistance as we can to the law enforcement and legal communities. To that end, Professor Gisèle Côté-Harper and Dr. Ron Fourney of our Committee along with Mr. David Bird, RCMP Legal Counsel, and Michael Zigayer, Department of Justice, are participating on a National Judicial Institute Advisory Committee which is responsible for overseeing the creation of an Electronic Bench Book (EBB) on the National DNA Data Bank for Judges.

In addition, we will continue to work closely with the Commissioner of the RCMP and the new Department of Public Safety and Emergency Preparedness (PSEPC) on new programs such as the possible establishment of a Missing Persons Index. In December 2003, the Advisory Committee was invited to review some of the potential issues facing the development of such an index. Committee members endorsed the idea as a significant contribution to public safety in Canada. They further suggested that the index could be housed within the National DNA Data Bank as an extension of its current mandate, following appropriate consultation and legislative review.

More information on the Advisory Committee and a copy of its annual report may be obtained at: Http://www.rcmp-grc.gc.ca/dna_ac/index_e.htm.



RICHARD A. BERGMAN, CHAIRPERSON REPRESENTATIVE OF THE POLICE COMMUNITY

Following 35 years of distinguished service with the RCMP, Richard Bergman retired from active police service in 1997. During his career, he served in Manitoba, Saskatchewan, British Columbia, Ontario and Atlantic Canada. Among his many significant career appointments, he served as Commanding Officer of the RCMP in Manitoba, the Director, RCMP Forensic Laboratories, Deputy Commissioner, National Police Services, and Deputy Commissioner, Atlantic Region. It was under his direction, as the Director of Forensic Laboratories, that the RCMP initiated their DNA program. Mr. Bergman graduated from the University of Saskatchewan in 1972 with a B.Sc. (Honours) and a M.Sc (Biochemistry) in 1974. He is also a graduate of the Career Assignment



Program, Government of Canada. Mr. Bergman is a member of a number of professional associations, and the recipient of a number of several distinguished awards. He has published and co-authored a number of publications relating to legal, police and science issues.

DR. GEORGE R. CARMODY, VICE-CHAIRPERSON POPULATION BIOLOGY SPECIALIST



Beginning an eminent career in academia upon graduation from Columbia University (Chemistry), Dr. Carmody completed his Ph.D. in Zoology from the same institution. Subsequently, he was a postdoctoral fellow in population biology at the University of Chicago, a senior fellow (genetics) at the University of Nottingham, and a visiting researcher and professor at the National Institute of Environmental Health Sciences at the University of Hawaii and the University of Texas. Since joining Carleton University in 1969 and becoming a Canadian citizen, Dr. Carmody has been an Assistant Professor, Associate Dean of Science, Chair, Integrated Science

Studies, and is currently an Associate Professor of Biology. Dr. Carmody is a member of a number of professional societies, has participated in the publication of several dozen scientific publications, testified in numerous DNA related court cases in Canada, and during his distinguished career, has presented briefings at numerous lectures and seminars around the world. He is a member of the N.Y. State DNA Subcommission and the US Department of Justice Kinship and Data Analysis Panel. Dr. Carmody is recognized in the scientific and legal communities as an expert in population genetics and statistics as applied to forensic applications.

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DR. RON FOURNEY OFFICER IN CHARGE, NATIONAL DNA DATA BANK

Dr. Fourney received his Ph.D. in Biochemistry and conducted post-doctoral studies in molecular basis of cancer predisposition as a National Cancer Institute of Canada and Alberta Cancer Board Research Fellow. He joined the RCMP as a civilian member and molecular genetics specialist in 1988. Dr. Fourney is a founding member of the RCMP DNA program and has been instrumental in the development and implementation of forensic DNA typing for Canada. He represents the RCMP on numerous national and international committees tasked with the development of DNA identification methods for forensic human identification. He has also played key roles in numerous



investigations including organization and management of the SR111 DNA Typing task force for the DNA identification of the victims of the Swissair Flight 111 aircraft disaster. He has continued his interest in enhancing forensic DNA technology and has specialized in fluorescent Short Tandem Repeat detection analysis, robotic automation and comprehensive strategic planning for DNA data banks and high throughput DNA analysis. Dr. Fourney is closely involved with the privacy and security issues of DNA human identification and was a key content expert in the design of the Canadian DNA Data Bank Legislation.

Dr. Fourney is currently the Officer in Charge of Canada's National DNA Data Bank and also maintains an active involvement with forensic science research and development as the Research Project Manager for the RCMP Forensic Laboratory Services. He is an advisor to the International Journal of Legal Medicine and is a member of the editorial boards for The Journal of BioTechniques and The Journal of Forensic Sciences. He has an academic cross appointment as adjunct professor in the Department of Biology, Carleton University (Ottawa-Carleton Institute of Biology).



THE HONOURABLE PETER CORY, C.C, C.D, Q.C REPRESENTING LAW

Career History: Pilot in the Royal Canadian Air Force. Served overseas with 6th Bomber Group. Called to the Ontario Bar in 1950. Remained a member of reserve army until 1952. Appointed QC, 1963. Practiced law with Holden, Murdoch. Elected bencher of the Law Society of Upper Canada, 1971. Past Chairman of the Ontario Civil Liberties Section of the Canadian Bar Association. Past President of the County of York Law Association. Past National Director of the Canadian Bar Association. Past President of the Advocates' Society.

Appointed to the Supreme Court of Ontario High Court, 1974. Appointed to the Ontario Court of Appeal, 1981. Appointed to the Supreme Court of Canada, 1 February 1989. Retired on 1 June 1999. Honorary Colonel, 426(T) Training Squadron. Chair of Military Judges' Compensation Committee. Commissioner for the Province of Manitoba Inquiring into the Wrongful Conviction for Murder and Compensation Payable to Thomas Sophonow. Commissioner for the Province of Ontario on Role of Paralegals. Appointed by the English and Irish Governments to review six murder cases selected by the parties of the Peace Accord to determine whether any or all of them should be subject of a public inquiry. Member of DNA Databank Advisory Committee.

GISELE COTE-HARPER, O.C., Q.C. HUMAN RIGHTS SPECIALIST



Gisèle Côté-Harper graduated from Laval University (B.A.(és arts); LL.L.) and Harvard University (LL.M.). She is currently a Barrister and a Professor at the Faculty of Law, Université Laval, specializing in Criminal Law and Human Rights.

From 1978 to 1993, Professor Côté-Harper was successively appointed as a member of the Canadian Human Rights Tribunal, the Quebec Human Rights Commission and the RCMP Public Complaints Commission. She has also served as an independent expert on the U.N. Human Rights Committee.

Gisèle Côté-Harper has acted as co-rapporteur on the creation of an international institute for the development of human rights and of democratic institutions. Following this report, she was, for six years, the Founding Chairperson of the Board of Directors of the International Centre for Human Rights and Democratic Development (Rights and Democracy). She was later appointed to the International Commission on Intervention and State Sovereignty. The Commission report entitled *The Responsibility to Protect*, was launched at the United Nations in December 2001.

Professor Côté-Harper was appointed Queen's Counsel in 1987. In 1995, the United Nations Association of Canada recognized her contribution as a legal expert on national and international human rights issues by awarding her the Lester B. Pearson Medal. She was named Officer of the Order of Canada in 1997. In 1998, she was awarded the Quebec Bar Medal and, in 2002, the Golden Jubilee Medal. A distinguished author, Professor Côté-Harper now serves on the Board of Directors of the Centre for the Financial Services Ombudsnetwork (CFSON) and is also Vice President of the Board of Directors of the Pearson Peacekeeping Centre as well as a member of the General Assembly of the Inter-American Institute for Human Rights.

DR. WILLIAM S. DAVIDSON MEDICAL GENETICS SPECIALIST

After graduating with a BSc from Edinburgh University, Scotland, Willie Davidson emigrated to Canada and earned a PhD in Biochemistry from Queens University. He then carried out research at the University of California at Berkeley as an MRC Post-doctoral Fellow and then at the University of Connecticut Health Center at Farmington as an MRC Centennial Fellow. In 1981 he was joined the Biochemistry Department at Memorial University of Newfoundland where he remained for eighteen years rising through the academic ranks to Professor. During this period he served as Acting Chair of



the Biochemistry Department, Associate Dean of Science (Research), and Acting Dean of Science. In 1999 he moved to Simon Fraser University as Dean of Science, a position he held until 2003, when he returned to the ranks as Professor of Molecular Biology and Biochemistry. Dr. Davidson's research interests are many and diverse. He has published widely in the areas of molecular evolution, population genetics, genomics, and human genetics. His current research projects include the Atlantic salmon genome project, brood stock development of Arctic charr, and hereditary diseases that affect the Newfoundland population, particularly those causing loss of sight or kidney function. He has served on many national and international committees and at present is Chair of Genome Canada's Scientific and Industry Advisory Committee.



RAYMOND D'AOUST OFFICE OF THE PRIVACY COMMISSIONER OF CANADA

Effective September 2, 2003, Raymond D'Aoust was appointed Assistant Privacy Commissioner of Canada with primary responsibility for the Privacy Act, the federal public sector privacy law.

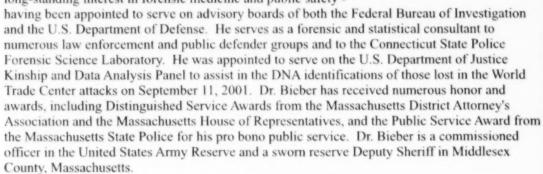
Prior to this and since November 1999, Raymond worked for the Canadian Centre for Management Development (CCMD), most recently as A/Director General, Career Development Branch. The Branch is responsible for designing and delivering the educational components of executive and management development programs such as the Management Trainee Program, the Career Assignment Program (CAP), the Direction program and the Accelerated Executive

Development Program (AEXDP). His portfolio also included learning programs and events for Deputies and Assistant Deputy Ministers. Prior to leading Career Development, Raymond was Director General, Research at CCMD. He was responsible for the long-term research program on Governance as well as for applied research on organizational learning and public sector reform in addition to assuming management responsibility for the Research Branch.

Raymond has more than twenty years of experience in the Canadian government in areas such as program evaluation, review, policy, public consultation, strategic planning, business planning, quality management, technology management and research in several departments and agencies. Raymond was a part-time teacher at Concordia University and delivered training to federal public servants on several occasions. He studied in political sociology and advanced research methods at Université Laval (B.A.), Ottawa University (M.A.) and Université du Québec à Montréal (doctoral studies).

DR. FREDERICK R. BIEBER BIO-MEDICAL ETHICS SPECIALIST

Born and raised in Saskatchewan, Frederick R. Bieber earned a Ph.D. degree in Human Genetics at the Medical College of Virginia. After postdoctoral research fellowships in medical genetics and pathology at the Massachusetts General Hospital in Boston he joined the Faculty of Medicine at Harvard University, where he is now Associate Professor of Pathology. Dr. Bieber is a medical geneticist at Brigham and Women's Hospital and has a long-standing interest in forensic medicine and public safety -



MANDATE

The National DNA Data Bank Advisory Committee

The Committee was established pursuant to Section 12 of the *DNA Identification Act* through the annexed *Data Bank Advisory Committee Regulations*. The Regulations were enacted on May 8, 2000, several months before the proclamation of the *DNA Identification Act* and the *DNA Identification Regulations*, which occurred on June 30, 2000.

The establishment of an Advisory Committee was recommended by the Standing Senate Committee on Legal and Constitutional Affairs in its Sixteenth Report (December 8,1998) wherein the need for an independent advisory committee was deemed necessary to contribute to the effective and efficient operation of the Data Bank by providing expert advice to the RCMP Commissioner.

Appointed by the Solicitor General of Canada, the Committee functions as an independent body to assist the Commissioner in ensuring that the Data Bank operates in compliance with the legislation and regulations. In addition, it reviews the methods used to issue notifications, transmit information and convey and store samples. Other functions of interest include sampling processes and sample integrity, scientific integrity, genetic privacy, analytical procedures, international information sharing protocols, sample re-analysis and the DNA profile format itself.



Report Card of Value for the National DNA Data Bank



The National DNA Data Bank has had more than a 50% increase in the number of samples entered into the data bank this past year. With just under 74,000 samples in total, 59,000 are from the convicted offender index and 14,700 from the crime scene index, the number of offender matches has grown 140% compared to last years. Although numbers often represent an easily identified means to gauge success, the data bank looks toward the end result, which is often a successful police investigation. To date there has been more than 1872 matches within the data bank and this has made a difference in 130 murders, 336 sexual assaults, 970 break and enters and other offences.

More compelling is what the police reports about how the data bank is assisting their investigations on a case-by-case or daily basis. In a police survey responding to a National DNA Data Bank survey, more than 70% of the matches between crime scene and convicted offenders, has been used to identify a suspect. Of equal importance, in crime scene to crime scene matches, the data bank information was used to eliminate a suspect in 20% of the cases. There is direct value in the final match report with respondents agreeing that the information reduces the investigation time and provides assistance in ongoing cases in many different ways.

One of the benefits demonstrated is the identification and detection of potential suspects in minor criminal offences such as break and entering. In a small pilot project, with the Forensic Laboratory Services Biology operational case working sections and the National DNA Data Bank it was demonstrated that in just 276 selected break and enter cases, 56% of the DNA profiles entered into the CODIS indices (Crime Scene and Convicted Offender) resulted in matches. The study demonstrated that more than 15% of the developed break and enter DNA profiles were directly associated with major primary offences.

The numbers are definitive. The National DNA Data Bank is making a difference in police investigations to bring the administration of justice forward by focusing the investigation, helping to bring the perpetrators to justice while protecting the innocent. There is also no question that by increasing the numbers of samples entering the data bank, the match rate will grow potentially with exponential consequences. This underlines the importance of the Committee's recommendation to make the DNA data bank orders and to submit all possible crime scene DNA profiles. Currently Canadian Justice Statistics indicates that only 50% of the potential samples that are eligible as designated primary offences are being sent to the Convicted Offender Index.

During the year, the Advisory Committee continued to monitor the progress of finding a resolution to the problem of the growing number of samples of bodily substances taken under apparently defective DNA orders being held by the National DNA Data Bank but not processed. The Advisory Committee continues to recommend the following solutions:

 Seek clear statutory authority to allow the Commissioner of the RCMP to ask for advice on the legal status of the questionable samples he has received and permit the disposal of non qualifying samples where appropriate, or

Offer technical assistance to court clerks by developing self correcting computer forms that will limit inadvertent errors in listing non designated offences on DNA Data Bank Orders and continue offering assistance with judicial education programs.

A Missing Persons Index for Canada

In May of 2003, Bill C-441, a Private Member's Bill to Amend the DNA Identification Act was introduced into Parliament. Bill C-441 proposed the addition of a Missing Persons Index (MPI) and a Human Remains Index to the National DNA Data Bank. Public comment, generally limited to newspaper articles, was positive. In the Fall of 2003, Solicitor General Wayne Easter, while meeting with his Provincial/Territorial colleagues, also raised the possibility of establishing a National Missing Persons Index operated strictly for humanitarian purposes. The response to Mr. Easter's proposals was also supportive. At the same time, there was some interest expressed in exploring the possibility of linking or cross checking a MPI with Canada's existing National DNA Bank Indices which now contain some 70,000 DNA profiles. Since the two existing indices can now only contain the DNA profiles of individuals convicted of a designated offence or classified as a serious criminal offender, or contain the DNA profiles of potential suspects associated with designated offence crime scenes, the issue of cross checking a humanitarian data bank against criminal data banks must be considered very seriously. It was in this context that the Advisory Committee was approached in November 2003 by the Solicitor General and the Commissioner with a request to consider a number of legal, operational and privacy questions which must be resolved before this initiative can be pursued to the legislative proposal level.

In December 2003, the Committee met to consider the issues raised by the Minister and the Commissioner. Invited guests to the meeting included representatives of the Solicitor General; the Minister of Justice; RCMP Forensic Laboratory Services; CPIC; Chief, FBI Combined DNA Index Unit; Program Manager, FBI National Missing Persons Index DNA Database and the

Supervisor, DNA Data Bank, Florida Dept. Of Law Enforcement.



Issues discussed included constitutional and jurisdictional concerns as well as options related to the creation of an MPI in Canada. The Committee is unanimous in its conclusion that there are no insurmountable constitutional or jurisdictional obstacles to creating an MPI in Canada. As well, the Committee believes that such a Data Bank should be national in both its structure and

management. The Committee discussed the use of various technologies including the present PCR-based STR analysis, the need, if any, for Mitochondrial DNA analysis in relation to human

remains and possible use of mini-STR's, recently used successfully following the World Trade Center disaster. Considerable discussion centered around various policies which would govern the input and search parameters related to DNA profiles from both missing person themselves, their effects and their relatives. Further discussions centered around policies to encourage relatives of missing persons to contribute consent DNA samples with specific restrictions on cross searching of criminal indices.



Policy options regarding sample retention were also discussed in relation to various provincial statues. Discussions concerning other jurisdictions centered around the US experience as described by the FBI and Florida State representatives, all of whom reported very positive results



In the US, the FBI acts as a national repository for cases emanating from States which have established missing persons indices. As well, the FBI provides a national mitochondrial DNA analysis capability for human remains, which, for reasons of cost and volume, is not viable in most States. In relation to data exchange, the Committee sees no impediment to Canada participating in the exchange of MPI DNA data, provided the exchange is consistent with provisions of the DNA Identification Act and RCMP/Interpol DNA Information Sharing Agreement as they may be modified to allow for the exchange of MPI data.

Since its inception, the Committee has always considered its role to protect personal privacy as one of its prime responsibilities. While not legislated, the National DNA Data Bank's Policy mandates physical separation of each DNA profile from its respective biographical information by bar code. The Committee is not aware of any other system in the world which provides this degree of privacy protection to its citizens. It is the opinion of the Advisory Committee that the National DNA Data Bank is clearly the most secure location to process and manage a National Missing Persons Index.

The Committee forwarded it's recommendations to the Minister and the Commissioner at the end of December 2003. We would encourage the government to move forward with a public consultation document to seek the input of all interested Canadian as soon as possible.



Security Issues Related to the National DNA Data Bank

From the inception of the idea, to the development of the science, to the actual presentation of evidence in the first DNA case in Canada, the possibility of creating a National DNA Data Bank, somewhat similar to the National Fingerprint repository, was always a real but distant possibility.



However, it was only following the very convincing convictions and exonerations attributed to DNA evidence during its first few years of use, that the Government of Canada, through a process involving input from many ordinary citizens, interest groups and Provincial Governments, including Mr. Bruce Phillips, the Privacy Commissioner of the day, decided to create the National DNA Data Bank. At the same time, it was clearly recognized that in creating a National DNA Data Bank, the legislation should protect the privacy and charter rights of all Canadians. It is the opinion of the Committee that a similar approach should be taken during the considerations leading up to the ultimate decision to create a Missing Persons Index in Canada. While not mandated by legislation, the decision to physically separate the DNA profile and the associated biographical information within the National DNA Data Bank and RCMP Data Banks was both novel and unique and is evidence that both personal and public interests may be jointly served and protected by the application of appropriate policy considerations during the design of a Data Bank. The members of the National DNA Data Bank Advisory Committee clearly support the creation of a National Missing Persons Index in order to assist in the ongoing investigation of missing persons as well as the identification of family members who may become victims of criminal violence. In this context, we believe that an in-depth Privacy Impact Assessment should be conducted and forwarded to the Privacy Commissioner of Canada for her review as part of the general consultation process leading up to any Government initiative to introduce Missing Persons Index legislation in Canada.

Content Experts and Guest Speakers to the National DNA Data Bank Advisory Committee April 1, 2003 to March 31, 2004



Mr. Richard Bergman, Chairperson of the National DNA Data Bank Advisory Committee, with the Advisory Committee Members, convey thanks and appreciation to the following people who provide ongoing information, assistance, research and support to the NDDB AC mandate:

David Bird Susan Walker Mike Buisson Dr. Tom Callaghan David Coffman Lise Crouch

Sylvain Lalonde

Amanda Lamoureux

Marc Lett Theodore Lukaszewski

Christine Miles

Sylvia MacKenzie Earla-Kim McColl Kevin Mole

Sylvain Murray

Alison Rutherford

Karen Sallows Geneviève Sirois Dr. John Stewart Tom Stimpson

Jessica Thibeault George Thomson Greg Yost Michael Zigayer Legal Counsel, RCMP

Senior PCR Analyst, National DNA Data Bank Assistant Commissioner, Chief National Police Services CODIS Unit Chief, Federal Bureau of Investigation (FBI) Crime Lab Analyst, Florida Dept. of Law Enforcement Operational Policy Section, National Contract Policing Branch, RCMP

CODIS Administrator, NDDB, Forensic Laboratory Services (FLS)

Executive Assistant to Assistant Deputy Minister, Policing and Law Enforcement Branch, Public Safety and Emergency Preparedness Canada (PSEPC) Instrumental Specialist, National DNA Data Bank

Oi/c Planning, Performance Management and Evaluation, RCMP

Director General, Policy and Law Enforcement Branch, PSEPC

Counsel, Legal Services, PSEPC OIC Operational Policy Section, CCAPS

Chief Superintendent, OIC Canadian Police Information Centre (CPIC)

Team Leader, Resource Management, Financial Management, RCMP

Senior Policy Analyst, Policing and Law Enforcement

Branch, PSEPC
Director, Law Enforcement Division, PSEPC
Policy Analyst, Law Enforcement Division, PSEPC

Program Manager FBI's National MPI DNA Database Consultant for the Missing Person Index Budget Project, FLS

Articling Student, Department of Justice Canada (DOJ) Executive Director National Judicial Institute

Counsel, Criminal Law Policy Section, DOJ Senior Counsel, Criminal Law Policy Section, DOJ

Financial Report 2003-2004

National DNA Data Bank Advisory Committee Annual Costs April 1, 2003 - March 31, 2004

Date of Meeting	Total Expenditure
2003, August 7-8, Ottawa	\$18,399.64
2003 December 3-5, Ottawa	\$21,586.52
2004 March 25-26, Ottawa	\$14,377.92
Total	\$54,364.08
Balance	-\$ 4,364.08
Not inclusive of translation and publication	on costs for Annual Report



Total

\$50,000

Acronyms

A/Commr.	Assistant Commissioner
B&E	Break and Enter
BCAA	Biology Casework Analysis Agreements
CODIS	Combined DNA Index System
CNPS	Chief National Police Services
CRU	Case Reception Unit
CSI	Crime Scene Index
DB	National DNA Data Bank
DNA	Deoxyribononucleic Acid
DOJ	Department of Justice
ERU	Evidence Recovery Unit
FBI	Federal Bureau of Investigation
FLS	Forensic Laboratory Services
FSS	Forensic Science Service
MPI	Missing Persons Index
NJI	National Judicial Institute
NPS	National Police Services
Oi/c	Officer in Charge
PLEB	Police and Law Enforcement Branch
PLEIB	Policing, Law Enforcement and Interoperability Branch
PSEPC	Public Safety and Emergency Preparedness Canada
RCMP	Royal Canadian Mounted Police
STR	Short Tandem Repeats
STaCS	Sample Tracking and Control System
ULC	Uniform Law Conference



